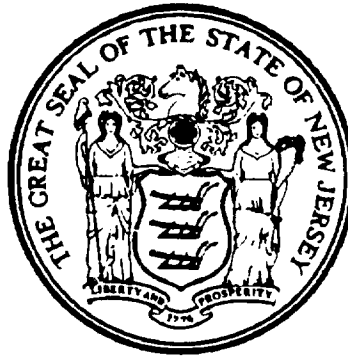


**STATE OF NEW JERSEY
DEPARTMENT OF LABOR
DIVISION OF TEMPORARY DISABILITY INSURANCE**



**NEW JERSEY
TEMPORARY DISABILITY BENEFITS LAW**

January 2003

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TEMPORARY DISABILITY BENEFITS LAW

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TEMPORARY DISABILITY BENEFITS LAW

ARTICLE I

43:21-25. Short title

This act shall be known and may be cited as the "Temporary Disability Benefits Law."

L.1948, c. 110, p. 586, s. 1.

43:21-26. Purpose

This act shall be liberally construed as remedial legislation enacted upon the following declarations of public policy and legislative findings of fact:

The public policy of this State, already established, is to protect employees against the suffering and hardship generally caused by involuntary unemployment. But the unemployment compensation law provides benefit payments to replace wage loss caused by involuntary unemployment only so long as an individual is "able to work, and is available for work," and fails to provide any protection against wage loss suffered because of inability to perform the duties of a job interrupted by illness. Nor is there any other comprehensive and systematic provision for the protection of working people against loss of earnings due to nonoccupational sickness or accident.

The prevalence and incidence of nonoccupational sickness and accident among employed people is greatest among the lower income groups, who either cannot or will not voluntarily provide out of their own resources against the hazard of earnings loss caused by nonoccupational sickness or accident. Disabling sickness or accident occurs throughout the working population at one time or another, and approximately fifteen per centum (15%) of the number of people at work may be expected to suffer disabling illness of more than one week each year.

It has been found that existing voluntary plans for the payment of cash sickness benefits cover less than one-half of the number of working people of this State who are now covered by the unemployment compensation law, and that even this degree of voluntary protection affords uneven, unequal and sometimes uncertain protection among the various voluntary benefit programs. It is therefore desirable and necessary to fill the gap in existing provisions for protection against the loss of earnings caused by involuntary unemployment, by extending such protection to meet the hazard of earnings loss due to inability to work caused by nonoccupational sickness or accident.

The foregoing facts and considerations require that there be a uniform minimum program providing in a systematic manner for the payment of reasonable benefits to replace partially such earnings loss and to meet the continuing need for benefits where an individual becomes disabled during unemployment. In order to maintain consumer purchasing power, relieve the serious menace to health, morals and welfare of the people caused by insecurity and the loss of earnings, to reduce the necessity for public relief of needy persons, and in the interest of the health,

welfare and security of the people of this State, such a system, enacted under the police power, is hereby established, requiring the payment of reasonable cash benefits to eligible individuals suffering accident or illness which is not compensable under the workmen's compensation law.

L.1948, c. 110, p. 586, s. 2.

43:21-27. Definitions

As used in this act, unless the context clearly requires otherwise:

(a) (1) "Covered employer" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, who is an employer subject to the chapter to which this act is a supplement, designated as the "unemployment compensation law" (R.S. 43:21-1 et seq.), except the State, its political subdivisions, and any instrumentality of the State unless such governmental entity elects to become a covered employer under the "Temporary Disability Benefits Law"; provided, however, that commencing with the effective date of this act the State of New Jersey, including Rutgers, The State University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, shall be deemed a covered employer, as defined herein.

(2) Any governmental entity or instrumentality which is an employer under R.S. 43:21-19(h)(5) may elect to become a "covered employer" under this subsection beginning with the date on which its coverage under subsection 19(h)(5) begins or as of January 1 of any year thereafter by filing written notice of such election with the division within at least 30 days of the effective date. Such election shall remain in effect for at least two full calendar years and may be terminated as of January 1 of any year thereafter by filing with the division a written notice of termination at least 30 days prior to the termination date.

(b) "Covered individual" means any person who is in employment, as defined in the chapter to which this act is a supplement, for which the individual is entitled to remuneration from a covered employer, or who has been out of such employment for less than two weeks. However, a "covered individual" who is employed by the State of New Jersey, including Rutgers, The State University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, or by any governmental entity or instrumentality which elects to become a "covered employer" pursuant to this amendatory act, shall not be eligible to receive any benefits under the "Temporary Disability Benefits Law" until such individual has exhausted all sick leave accumulated as an employee in the classified service of the State or accumulated under terms and conditions similar to classified employees or accumulated under the terms and conditions pursuant to the laws of this State or as the result of a negotiated contract with any governmental entity or instrumentality which elects to become a "covered employer."

"Covered individual" shall not mean any member of the Division of State Police in the Department of Law and Public Safety.

(c) "Division" or "commission" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, and any transaction or exercise of authority by the director of the division shall be deemed to be performed by the division.

(d) "Day" shall mean a full calendar day beginning and ending at midnight.

(e) "Disability" shall mean such disability as is compensable under section 5 of this act.

(f) "Disability benefits" shall mean any cash payments which are payable to a covered individual pursuant to this act.

(g) "Period of disability" with respect to any individual shall mean the entire period of time during which the individual is continuously and totally unable to perform the duties of his employment, except that two periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one continuous period of disability; provided the individual has earned wages during such 14-day period with the employer who was the individual's last employer immediately preceding the first period of disability.

(h) "Wages" shall mean all compensation payable by covered employers to covered individuals for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash.

(i) (1) (Deleted by amendment, P.L.2001, c.17).

(2) (Deleted by amendment, P.L.2001, c.17).

(3) "Base week" with respect to periods of disability commencing on or after October 1, 1985 and before January 1, 2001, means any calendar week during which an individual earned in employment from a covered employer remuneration equal to not less than 20% of the Statewide average weekly remuneration as determined under subsection (c) of R.S.43:21-3, which shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof.

(4) "Base week" with respect to periods of disability commencing on or after January 1, 2001, means any calendar week of an individual's base year during which the individual earned in employment from a covered employer remuneration not less than an amount 20 times the minimum wage in effect pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the benefit year commences, which amount shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof, except that if in any calendar week an individual subject to this paragraph is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph during that week.

(j) "Average weekly wage" means the amount derived by dividing a covered individual's total wages earned from the individual's most recent covered employer during the base weeks in

the eight calendar weeks immediately preceding the calendar week in which disability commenced, by the number of such base weeks. If this computation yields a result which is less than the individual's average weekly earnings in employment, as defined in the chapter to which this act is a supplement, with all covered employers during the base weeks in such eight calendar weeks, then the average weekly wage shall be computed on the basis of earnings from all covered employers during the eight base weeks immediately preceding the week in which the disability commenced.

L.1948, c.110, s.3; amended 1950, c.173, s.1; 1952, c.188, s.1; 1953, c.221, s.1; 1971, c.346, s.13; 1980, c.18, s.2; 1981, c.349, s.1; 1984, c.104, s.1; 2001, c.17, s.3.

43:21-28. Coverage

All covered individuals shall be entitled on and after January first, one thousand nine hundred and forty-nine, to the benefits provided under either a private plan or the State plan of disability benefits, as hereinafter provided.

L.1948, c. 110, p. 588, s. 4.

43:21-29. Compensable disability

Disability shall be compensable subject to the limitations of this act, where a covered individual suffers any accident or sickness not arising out of and in the course of the individual's employment or if so arising not compensable under the workers' compensation law (Title 34 of the Revised Statutes), and resulting in the individual's total inability to perform the duties of employment.

L.1948, c. 110, p. 588, s. 5. Amended by L.1961, c. 43, p. 473, s. 10; L.1980, c. 90, s. 13.

43:21-30. Nonduplication of benefits

No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the federal government. Nor shall any benefits be required or paid under this act for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or payable on account of the disability of the covered individual under any workers' compensation law, occupational disease law, or similar legislation, of this State or of any other state or the federal government. Where a claimant's claim for compensation for temporary disability, under the provisions of subsection a. of R.S.34:15-12, is contested, and thereby delayed, and such claimant is otherwise eligible for benefits under this chapter, said claimant shall be paid the benefits provided by this chapter until and unless said claimant receives compensation under the provisions of subsection a. of R.S.34:15-12. In the event that workers' compensation benefits, other than benefits for permanent partial or permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimant has received disability benefits pursuant to this act, the State fund, or the private plan,

as the case may be, shall be entitled to be subrogated to such claimant's rights in such award to the extent of the amount of disability payments made hereunder. Disability benefits otherwise required hereunder shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his most recent employer contributed on his behalf. If there has been a settlement of a workers' compensation claim pursuant to R.S.34:15-20 in an amount less than that to which the claimant would otherwise be entitled as disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), for the same illness or injury, the claimant shall be entitled to disability benefits for the period of disability, reduced by the amount from the settlement received by the claimant under R.S.34:15-20. The State fund or a private plan seeking to recover any amount of disability benefit payments from a workers' compensation award shall be required to demonstrate that the recovery is in compliance with the provisions of this section.

L.1948, c.110, s.6; amended 1952, c.190; 1967, c.306; 2000, c.105; 2001, c.329.

43:21-30.1. Notice of unemployment compensation, conditions

The Division of Unemployment and Temporary Disability Insurance shall provide notice to each individual receiving compensation under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.) explaining the conditions under which the individual may receive unemployment compensation pursuant to this 1991 amendatory and supplementary act.

L.1991, c.486, s.2

43:21-31. Certain individuals excepted

Any person who adheres to the faith or teachings of any church, sect, or denomination, and who in accordance with its creed, tenets, or principles depends for healing upon prayer or spiritual means, in the practice of religion, shall be exempt from this act upon filing with the commission and with his employer a statement, in such form as the commission shall by regulation prescribe, waiving any and all benefits under this act. Such person shall thereupon be exempt from the provisions of this act, including any obligation to make contributions hereunder and any right to receive benefits hereunder.

L.1948, c. 110, p. 589, s. 7.

ARTICLE II – PRIVATE PLANS

43:21-32. Establishment of private plans

Any covered employer may establish a private plan for the payment of disability benefits in lieu of the benefits of the State plan hereinafter established. Benefits under such a private plan may be provided by a contract of insurance issued by an insurer duly authorized and admitted to do business in this State, or by an agreement between the employer and a union or association representing his employees, or by a specific undertaking by the employer as a self-insurer.

Subject to the insurance laws of this State, such a contract of insurance may be between the insurer and the employer; or may be between the insurer and two or more employers, acting for the purpose through a nominee, designee or trustee; or may be between the insurer and the union or association with which the employer has an agreement with respect thereto. Each such private plan shall be submitted in detail to the Division of Employment Security and shall be approved by the division, to take effect as of the first day of the calendar quarter next following, or as of an earlier date if requested by the employer and approved by the Division of Employment Security, if it finds that:

(a) all of the employees of the employer are to be covered under the provisions of such plan with respect to any disability commencing after the effective date of such plan, except as otherwise provided in this section; and

(b) eligibility requirements for benefits are no more restrictive than as provided in this act for benefits payable by the State plan; and

(c) the weekly benefits payable under such plan for any week of disability are at least equal to the weekly benefit amount payable by the State plan, taking into consideration any coverage with respect to concurrent employment by another employer, and the total number of weeks of disability for which benefits are payable under such plan is at least equal to the total number of weeks for which benefits would have been payable by the State plan; and

(d) no greater amount is required to be paid by employees toward the cost of benefits than that prescribed by law as the amount of worker contribution to the State disability benefits fund for covered individuals under the State plan; and

(e) coverage is continued under the plan while an employee remains a covered individual as defined in section three of this act, but not after the employee may become employed by another employer following termination of employment to which the plan relates; and

(f) a majority of the employees to be covered by the plan have or shall have agreed to the plan prior to the effective date thereof, if employees are required to contribute to the cost of the private plan, as provided in section nine.

Subject to the approval of the Division of Employment Security, any such private plan may exclude a class or classes of employees, except a class or classes determined by the age, sex or race of the employees, or by the wages paid such employees, the exclusion of which, in the opinion of the division, will result in a substantial selection of risk adverse to the State plan. Covered individuals so excluded shall be covered by the State plan and subject to the employee contribution required by law to be paid into the State disability benefits fund.

L.1948, c. 110, p. 590, s. 8. Amended by L.1950, c. 173, p. 394, s. 2; L.1953, c. 426, p. 2147, s. 1.

43:21-33. Election by employees; deduction of contributions

If employees are to be required to contribute toward the cost of benefits under a private plan, such plan shall not become effective unless prior to the effective date a majority of the employees in the class or classes to be covered thereby have agreed thereto by written election. In such event, the employer may during the continuance of the approved private plan collect the required contributions thereto by deduction from the wages paid to covered individuals under such plan, which deduction may be combined with that deduction required by Revised Statutes, section 43:21-7(d)(1) if reasonable notice is given covered individuals concerning such combined deduction by the employer; provided, that if any employer fails to deduct the contributions of any of his employees at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he may not thereafter collect a contribution with respect to such wages previously paid.

A covered individual shall not be entitled to any benefits from the State disability benefits fund with respect to any period of disability commencing while he is covered under an approved private plan.

L.1948, c. 110, p. 591, s. 9. Amended by L.1950, c. 173, p. 396, s. 3.

43:21-34. Existing plans

If upon the effective date of this act a covered employer has in effect a plan for the payment of cash disability benefits to his employees or to any class or classes thereof, or has in effect an agreement with a union or association whereby there is in effect a plan for the payment of cash disability benefits to his employees or to any class or classes thereof (and to the cost of which plan the employer is obligated to contribute,) such plan shall, regardless of the requirements of this article, be deemed to be an approved private plan until the earliest date upon which the employer shall have the right to modify the benefits of or discontinue such plan, or to discontinue contributions toward the cost thereof. In such case the employer shall notify the commission of the circumstances. During the continuance of such private plan the employees covered thereunder shall not be entitled to any benefits under the State plan with respect to any period of disability commencing while they are covered under such private plan. If any such private plan covers only a class or classes of covered individuals, the employer may effect another private plan for his remaining employees or for a class or classes of them, subject to the requirements and limitations of section eight.

L.1948, c. 110, p. 592, s. 10.

43:21-35. Termination of private plans

(a) If the division is furnished satisfactory evidence that a majority of the employees covered by an approved private plan have made election in writing to discontinue such plan, the division shall withdraw its approval of such plan effective at the end of the calendar quarter next succeeding that in which such evidence is furnished. Upon receipt of a petition therefor signed by not less than 10% of the employees covered by an approved private plan, the division shall

require the employer upon 30 days' written notice to conduct an election by ballot in writing to determine whether or not a majority of the employees covered by such private plan favor discontinuance thereof; provided, that such election shall not be required more often than once in any 12-month period.

(b) Unless sooner permitted, for cause, by the division, no approved private plan shall be terminated by an employer, in whole or in part, until at least 30 days after written notice of intention so to do has been given by the employer to the division and after notices are conspicuously posted so as reasonably to assure their being seen, or after individual notices are given to the employees concerned.

(c) The division may after notice and hearing withdraw its approval of any approved private plan if it finds that there is danger that the benefits accrued or to accrue will not be paid, that the security for such payment is insufficient, or for other good cause shown. No employer, and no union or association representing employees, shall so administer or apply the provisions of an approved private plan as to derive any profit therefrom. The division may withdraw its approval from any private plan which is administered or applied in violation of this provision.

(d) No termination of an approved private plan shall affect the payment of benefits, in accordance with the provisions of the plan, to disabled employees whose period of disability commenced prior to the date of termination. Employees who have ceased to be covered by an approved private plan because of its termination shall, subject to the limitations and restrictions of this act, become eligible forthwith for benefits from the State Disability Benefits Fund for disability commencing after such cessation, and contributions with respect to their wages shall immediately become payable as otherwise provided by law. Any withdrawal of approval of a private plan pursuant to this section shall be reviewable by writ of certiorari or by such other procedure as may be provided by law.

(e) Anything in this act to the contrary notwithstanding a covered employer who, under an approved private plan, is providing benefits at least equal to those required by the State plan, may modify the benefits under the private plan so as to provide benefits not less than the benefits required by the State plan; provided, that individuals covered under such plan shall not be required to contribute to such plan at a rate exceeding $\frac{3}{4}$ of 1% of the amount of "wages" established for any calendar year under the provisions of R.S. 43:21-7(b) prior to January 1, 1975, and $\frac{1}{2}$ of 1% for calendar years beginning on or after January 1, 1975. Notification of such proposed modification shall be given by the employer to the division and to the individuals covered under such plan, on or before May 1, 1975.

L.1948, c. 110, p. 593, s. 11. Amended by L.1952, c. 188, p. 678, s. 2; L.1971, c. 346, s. 14; L.1974, c. 86, s. 8.

43:21-36. Additional benefits

Nothing in this act shall be construed to prohibit the establishment by an employer, without approval, of a supplementary plan or plans providing for the payment to employees, or to any class or classes thereof, of benefits in addition to the benefits of an approved private plan,

or to prohibit the collection or receipt of additional voluntary contributions from employees toward the cost of such additional benefits. The rights, duties and responsibilities of all interested parties under such supplementary plans shall be unaffected by any provision of this act.

L.1948, c. 110, p. 594, s. 12.

ARTICLE III – STATE PLAN

43:21-37. Persons entitled to benefits

Any covered individual who on the date of the commencement of a period of disability is not entitled to disability benefits under an approved private plan shall be entitled to disability benefits as provided in this article, referred to in this act as the State plan.

L.1948, c. 110, p. 594, s. 13.

43:21-38. Duration of benefits

With respect to periods of disability commencing on or after January 1, 1953, disability benefits, not in excess of an individual's maximum benefits, shall be payable with respect to disability which commences while a person is a covered individual under the Temporary Disability Benefits Law, and shall be payable with respect to the eighth consecutive day of such disability and each day thereafter that such period of disability continues; and if benefits shall be payable for three consecutive weeks with respect to any period of disability commencing on or after January 1, 1968, then benefits shall also be payable with respect to the first seven days thereof. The maximum total benefits payable to any eligible individual for any period of disability commencing on or after January 1, 1968, shall be either 26 times his weekly benefit amount or 1/3 of his total wages in his base year, whichever is the lesser; provided that such maximum amount shall be computed in the next lower multiple of \$1.00 if not already a multiple thereof.

L.1948, c. 110, p. 594, s. 14. Amended by L.1951, c. 54, p. 406, s. 1; L.1952, c. 188, p. 680, s. 3; L.1967, c. 30, s. 8; L.1984, c. 104, s. 2, eff. Oct. 1, 1984.

43:21-39. Limitation of benefits

Notwithstanding any other provision of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), no benefits shall be payable under the State plan to any person:

(a) for the first seven consecutive days of each period of disability; except that if benefits shall be payable for three consecutive weeks with respect to any period of disability commencing on or after January 1, 1968, then benefits shall also be payable with respect to the first seven days thereof;

- (b) for more than 26 weeks with respect to any one period of disability;
- (c) for any period of disability which did not commence while the claimant was a covered individual;
- (d) for any period during which the claimant is not under the care of a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, or chiropractor, who, when requested by the division, shall certify within the scope of the practitioner's practice, the disability of the claimant, the probable duration thereof, and, where applicable, the medical facts within the practitioner's knowledge;
- (e) (Deleted by amendment, P.L.1980, c.90.)
- (f) for any period of disability due to willfully and intentionally self-inflicted injury, or to injury sustained in the perpetration by the claimant of a crime of the first, second, or third degree;
- (g) for any period during which the claimant performs any work for remuneration or profit;
- (h) in a weekly amount which together with any remuneration the claimant continues to receive from the employer would exceed regular weekly wages immediately prior to disability;
- (i) for any period during which a covered individual would be disqualified for unemployment compensation benefits under subsection (d) of R.S.43:21-5, unless the disability commenced prior to such disqualification; and there shall be no other cause of disqualification or ineligibility to receive disability benefits hereunder except as may be specifically provided in this act.

L.1948, c.110, s.15; amended 1961,c.43, s.11; 1967,c.30,s.9; 1980,c.90,s.14; 1983,c.47; 1989, c.213, s.2.

43:21-40. Weekly and daily benefit amounts

With respect to periods of disability commencing on or after July 1, 1961, an individual's weekly benefit amount shall be determined and computed by the division on the same basis as the weekly benefit rate is determined and computed pursuant to subsection (c) of R.S. 43:21-3, except that for periods of disability commencing on or after October 1, 1984, an individual's weekly benefit rate shall be two-thirds of his average weekly wage, subject to a maximum of 53% of the Statewide average weekly remuneration paid to workers by employers, as determined under subsection (c) of R.S. 43:21-3; provided, however, that such individual's benefit rate shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof. The amount of

benefits for each day of disability for which benefits are payable shall be one-seventh of the corresponding weekly benefit amount; provided that the total benefits for a fractional part of a week shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof.

L.1948, c. 110, p. 596, s. 16. Amended by L.1950, c. 173, p. 397, s. 4; L.1952, c. 188, p. 681, s. 4; L.1955, c. 202, p. 788, s. 1; L.1961, c. 43, p. 474, s. 12; L.1967, c. 30, s. 10; L.1984, c. 24, s. 19, eff. Oct. 1, 1984; L.1984, c. 104, s. 3, eff. Oct. 1, 1984.

43:21-41. Entitlement for disability benefits

(a) (Deleted by amendment, P.L.1975, c.355.)

(b) (Deleted by amendment, P.L.2001, c.17).

(c) (Deleted by amendment, P.L.2001, c.17).

(d) With respect to periods of disability commencing on or after October 1, 1984 and before January 1, 2001, no individual shall be entitled to benefits under this act unless the individual has established at least 20 base weeks within the 52 calendar weeks preceding the week in which the individual's period of disability commenced, or, in the alternative, the individual has earned twelve times the Statewide average weekly remuneration paid to workers, as determined under subsection (c) of R.S. 43:21-3, raised to the next higher multiple of \$100.00, if not already a multiple thereof, or more within the 52 calendar weeks preceding the week in which the period of disability commenced, nor shall the individual be entitled to benefits unless he shall duly file notice and proof of claim, and submit to such reasonable examinations as are required by this act and the rules and regulations of the division.

(e) With respect to periods of disability commencing on or after January 1, 2001, no individual shall be entitled to benefits under this act unless the individual has, within the 52 calendar weeks preceding the week in which the individual's period of disability commenced, established at least 20 base weeks or earned not less than 1,000 times the minimum wage in effect pursuant to section 5 of P.L.1996, c.113 (C.34:11-56a4) on October 1 of the calendar year preceding the calendar year in which the disability commences, which amount shall be adjusted to the next higher multiple of \$100.00, if not already a multiple thereof.

L.1948, c.110, s.17; amended 1950, c.173, s.5; 1952, c.188, s.5; 1975, c.355; 1984, c.104, s.4; 2001, c.17, s.4.

43:21-42. Payment of disability benefits; fund; deceased claimant; minors; representative appointed

(a) Disability benefits payable pursuant to this article shall be paid out of the State disability benefits fund established by law, and to the extent that such laws, regulations and practices are not inconsistent herewith, shall be administered subject to the same laws, regulations and practices as are applicable under the chapter of the Revised Statutes to which this act is a supplement.

(b) Payment of disability benefits due deceased claimant. If a claim for disability benefits is not filed by an otherwise eligible individual prior to his death, the first claim for such benefits may be filed, by the surviving spouse, or such other person or persons who may be legally entitled thereto. Payment of benefits shall be made upon receipt of a completed first claim form accompanied by an affidavit executed by such person or persons. The payment by the division of such benefits upon receipt of such affidavit, or affidavits, shall discharge the obligations of the division to the extent of such payment. The division shall prescribe the form of affidavit to be executed.

(c) Payment of disability benefits due minors. In case an infant or minor under the age of twenty-one years shall be entitled to receive any sum in payment for disability benefits under this chapter, the father, mother or natural guardian of the infant or minor shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such infant or minor duly appointed by the surrogate or the court of the county in which such infant or minor resides, and the release or discharge of such father, mother or natural guardian shall be a full and complete discharge of all claims or demands of the infant or minor thereunder. The division shall prescribe the form of affidavit and release to be executed by the parties concerned.

(d) Representative appointed for disability benefit beneficiary. The director of the division is hereby authorized and empowered when in his judgment it shall be advisable, to appoint a representative with power to act for a person who may be entitled to disability benefits by legally receiving and disbursing said payments under the direction of the director when it shall appear that such person is mentally, legally or physically unable to properly receive or disburse said payments, or when said person, after due diligence cannot be located. Whenever the person entitled to payments is a minor child, and the director determines that there is no proper person available to receive and disburse said payments for such child, then the Child Welfare Board, as constituted by the provisions of chapter five, of Title Institutions and Agencies (s. 30:5-1 et seq.), may be appointed as the representative of such minor child. Application on behalf of any such person shall be made in such form as the director shall prescribe.

L.1948, c. 110, p. 596, s. 18. Amended by L.1950, c. 260, p. 902, s. 1.

ARTICLE IV – DISABILITY DURING UNEMPLOYMENT

43:21-43. Benefits (Amended R.S. 43:21-3.)

43:21-44. Benefit Eligibility Conditions (Amended R.S. 43:21-4.)

ARTICLE V – ADMINISTRATION AND FINANCE

43:21-45. Administration

(a) It shall be the duty of the executive director of the commission to administer this act under the supervision and control of the commission; to appoint and fix the compensation of members of the staff subject to the approval of the commission and subject to the provisions of

subsection (d) of section 43:21-11 of the Revised Statutes; and to make such expenditures as are necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission.

(b) There is hereby established an Advisory Council on Disability Benefits to consist of the following: Four representatives of labor, two representatives of employers, two representatives of the insurance industry, and two representatives of the medical profession, to be appointed by the Governor with the advice and consent of the Senate; the executive director of the commission and the commissioners of Banking and Insurance, and of Labor, for the time being. Each appointive member shall serve for a term of five years, and vacancies shall be filled for the unexpired term only. Members of the advisory council shall serve without compensation but may be reimbursed for their necessary expenses. The advisory council shall:

- (1) study the administration and operation of this act;
- (2) aid the commission in formulating policies, rules and regulations and consult and advise with the executive director;
- (3) report to the Governor and the Legislature on or before March first, one thousand nine hundred and fifty-one, and at such other times as it may deem appropriate its recommendations for legislation or administration necessary or desirable to improve and perfect the operation of this act;
- (4) report to the Governor and the Legislature on such other matters relating to this act, and at such other times, as it may deem in the public interest.

L.1948, c. 110, p. 600, s. 21.

43:21-45.1. Reciprocal agreements for certain temporary disability benefits

a. The Commissioner of Labor is authorized to enter into a reciprocal agreement with the department of labor, or other corresponding agency, of any other state for the purpose of granting individuals residing in New Jersey eligibility for the award of benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), based wholly or in part upon employment in the other state, and granting individuals residing in the other state eligibility for the award of corresponding disability benefits under the statutory authority of that other state, based wholly or in part upon employment in this State.

b. Notwithstanding any other provision of law, if the Commissioner of Labor has entered into a reciprocal agreement with another state pursuant to subsection a. of this section, the commissioner is authorized to determine the amount of benefits to be paid to an individual, in accordance with the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), based wholly or in part upon the individual's employment in the other state.

L.2001, c.451, s.1.

43:21-46. State disability benefits fund

(a) The State disability benefits fund, hereinafter referred to as the fund, is hereby established. The fund shall remain in the custody of the State Treasurer, and to the extent of its cash requirements shall be deposited in authorized public depositories in the State of New Jersey. There shall be deposited in and credited to the fund the amount of worker and employer contributions provided under subparagraph (G) of paragraph (1) of subsection (d) of R.S.43:21-7 and subsection (e) of R.S.43:21-7, less refunds authorized by the chapter (R.S.43:21-1 et seq.) to which this act is a supplement, and the entire amount of interest and earnings from investments of the fund, and all assessments, fines and penalties collected under this act. The fund shall be held in trust for the payment of disability benefits pursuant to this act, for the payment of benefits pursuant to subsection (f) of R.S. 43:21-4, and for the payment of any authorized refunds of contributions. All warrants for the payment of benefits shall be issued by and bear only the signature of the Director of the Division of Unemployment and Temporary Disability Insurance or his duly authorized agent for that purpose. All other moneys withdrawn from the fund shall be upon warrant signed by the State Treasurer and countersigned by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey. The Treasurer shall maintain books, records and accounts for the fund, appoint personnel and fix their compensation within the limits of available appropriations. The expenses of the Treasurer in administering the fund and its accounts shall be charged against the administration account, as hereinafter established. A separate account, to be known as the account an amount determined to be sufficient for proper administration, not to exceed, however, 1/10 of 1% of the wages with respect to which current contributions are payable into the fund, and the entire amount of any assessments against covered employers, as hereinafter provided, for costs of administration prorated among approved private plans. The costs of administration of this act, including R.S.43:21-4(f), shall be charged to the administration account.

(b) A further separate account, to be known as the unemployment disability account, shall be maintained in the fund. Such account shall be charged with all benefit payments under R.S.43:21-4(f).

Prior to July 1 of each calendar year, the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey shall determine the average rate of interest and other earnings on all investments of the State disability benefits fund for the preceding calendar year. An amount equal to the sum of the amounts withdrawn from the unemployment trust fund pursuant to section 23 hereof multiplied by such average rate shall be determined by the division and credited to the unemployment disability account as of the end of the preceding calendar year.

If the unemployment disability account shall show an accumulated deficit in excess of \$200,000.00 at the end of any calendar year after interest and other earnings have been credited as provided hereinabove, the division shall determine the ratio of such deficit to the total of all taxable wages paid during the preceding calendar year, and shall make an assessment against all employers in an amount equal to the taxable wages paid by them during such preceding calendar year to employees, multiplied by such ratio, but in no event shall any such assessment exceed

1/10 or 1% of such wages; provided, however, that the assessment made against the State (including Rutgers, The State University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology) shall not exceed the sum of all benefits paid under the provisions of R.S.43:21-4(f) as the result of employment with the State. Such amounts shall be collectible by the division in the same manner as provided for the collection of employee contributions under this chapter (R.S.43:21-1 et seq.). In making this assessment, the division shall furnish to each affected employer a brief summary of the determination thereof. The amount of such assessments collected by the division shall be credited to the unemployment disability account.

As used in this section, "taxable wages" shall mean wages with respect to which employer contributions have been paid or are payable pursuant to subsections (a), (b) and (c) of R.S.43:21-7.

(c) A board of trustees, consisting of the State Treasurer, the Secretary of State, the Commissioner of Labor and Industry, the director of the division, and the State Comptroller, is hereby created. The board shall invest and reinvest all moneys in the fund in excess of its cash requirements, and such investments shall be made in obligations legal for savings banks; provided, however, that the provisions of this subsection shall in all respects be subject to the provisions of P.L.1950, c.270 (C.52:18A-79 et seq.).

(d) There is hereby appropriated, to be paid out of the fund, such amounts as may from time to time be required for the payment of disability benefits, and such amounts as may be required each year, as contained in the annual appropriation act, for the administration of this act, including R.S.43:21-4(f).

Amended 1951,c.355; 1968,c.406, s.1; 1970,c.324,s.2; 1980,c.18,s.3; 1984,c.104,s.5; 1994,c.112,s.3.

43:21-47. Withdrawal from federal treasury

(a) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1948, the sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and deposited in and credited to the account of this State in the unemployment trust fund of the United States of America, established and maintained pursuant to section 904 of the Social Security Act, as amended (42 U.S.C. s.1104), and to deposit such sums in the State disability benefits fund, established under the "Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(b) The State Treasurer is hereby authorized and directed to requisition and withdraw within 90 days of this enactment, an additional sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and

deposited in and credited to the account of this State in the unemployment trust fund of the United States of America, established and maintained pursuant to section 904 of the Social Security Act, as amended (42 U.S.C. s.1104), and to deposit such sums in the State disability benefits fund, established under the "Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. If the balance in the State disability benefits fund as of December 31 of any calendar year, increased by the contributions credited thereto on or before, or as of January 31 immediately thereafter is in excess of \$75,000,000.00, the excess shall be withdrawn from the State disability benefits fund and deposited to the account of this State in the unemployment trust fund until the entire \$50,000,000.00 requisitioned and withdrawn under this subsection (b) has been returned and deposited to the account of this State in the unemployment trust fund pursuant to the provisions of this subsection (b) and subsection (c) hereof. Such repayment to the unemployment trust fund shall be considered in determining contribution rates by employers to the State disability benefits fund under R.S.43:21-7(e). No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(c) The State Treasurer shall transfer from the State disability benefits fund to the clearing account of the unemployment compensation fund, as established under R.S.43:21-9, the sum of \$25,000,000.00. Such transfer may be made at such times and in such installments as the State Treasurer may deem proper, except that the total sum shall have been transferred by no later than April 30, 1971. Amounts transferred to the clearing account of the unemployment compensation fund under this subsection shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America in accordance with the provisions of R.S.43:21-9(b).

(d) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1985 a minimum of \$50,000,000.00, at the discretion of the Commissioner of Labor, from the State disability benefits fund established under section 22 of P.L.1948, c.110 (C.43:21-46) and to deposit such sum in the clearing account of the State unemployment compensation fund established under R.S.43:21-9. The amount transferred under this subsection (d) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America, in accordance with the provisions of R.S.43:21-9(b).

(e) The State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 1992 an amount not greater than \$25,000,000 from revenues received pursuant to paragraph (1) of subsection (e) of R.S.43:21-7, at the discretion of the Commissioner of Labor, from the State disability benefits fund established pursuant to section 22 of P.L.1948, c.110 (C.43:21-46) and to deposit that amount in the New Jersey Workforce Development Partnership Fund created pursuant to section 9 of P.L.1992, c.43 (C.34:15D-9).

(f) The State Treasurer, in consultation with the Commissioner of Labor, is hereby authorized and directed to requisition and withdraw on or after July 1, 1994 from revenues received pursuant to paragraph (1) of subsection (e) of R.S.43:21-7, an amount from the State disability benefits fund not greater than 25% of the balance in that fund as of June 30, 1994 and

to deposit that amount in the clearing account of the unemployment compensation fund established under R.S.43:21-9. The amount transferred under this subsection (f) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America, in accordance with the provisions of R.S.43:21-9(b).

(g) To the extent that funds from the General Fund are also deposited into the clearing account subsequent to July 1, 1994 but before October 2, 1994, such amount shall be reimbursed to the General Fund from amounts collected pursuant to R.S.43:21-7(d)(1)(G) and R.S.43:21-7(e) for quarterly periods ending on or after September 30, 1994.

(h) The amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section plus any amount reimbursed to the General Fund in accordance with subsection (g) shall be repaid to the State disability benefits fund from general State revenues with interest at the rate earned by the investments made with moneys remaining in the State disability benefits fund. The repayment period shall not exceed ten years. The amount repaid each year shall be not less than one tenth of the total amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section, plus not less than one tenth of the amount reimbursed to the General Fund in accordance with subsection (g), plus accrued interest. The State Treasurer shall, on or before the thirty-first day of January in 1995 and in each subsequent year determine what amount shall be repaid to the State disability benefits fund in the next commencing fiscal year, which amount shall be consistent with the provisions of this subsection (h). The Legislature shall appropriate that amount from the General Fund to the State disability benefits fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of R.S.43:21-7, the amount transferred from the State disability benefits fund to the unemployment compensation fund pursuant to subsection (f) of this section and reimbursed to the General Fund pursuant to subsection (g) of this section less repayments or other reductions, plus accrued interest shall be included therein.

(i) The State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 1996 an amount not greater than \$250,000,000 from the State disability benefits fund and to deposit that amount in the General Fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of R.S.43:21-7, the amount transferred from the State disability benefits fund to the General Fund pursuant to this subsection (i) shall be included therein.

(j) To ensure that the provisions of subsection (i) of this section do not reduce or delay benefits payable pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), whenever the amount in the State disability benefits fund is less than the amount required to pay the benefits provided under that law and the necessary costs of administering those benefits, the additional amount required to pay the benefits and the administrative costs shall be paid from the General Fund. The amounts paid from the General Fund for benefits and administrative costs pursuant to this subsection shall be repaid to the General Fund from the State disability benefits fund at such time as the Treasurer determines that

the repayment may be made without reducing or delaying benefits payable pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.). The repayment to the General Fund from the State disability benefits fund pursuant to this subsection (j) shall not effect an increase in employee or employer contributions under subsection (d) or (e) of R.S.43:21-7.

(k) The State Treasurer is hereby authorized and directed to requisition and withdraw, in addition to the \$33,000,000 appropriated from the State disability benefits fund pursuant to section 61 of P.L.2001, c.130 for transfer to the General Fund, before July 1, 2002 an amount not greater than \$50,000,000 from the State disability benefits fund and to deposit that amount in the General Fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of R.S.43:21-7, the amount transferred from the State disability benefits fund to the General Fund pursuant to this subsection (k) shall be regarded as being included in the State disability benefits fund.

(l) The State Treasurer is authorized to utilize funds from the State disability benefits fund to purchase insurance, excess insurance or reinsurance for the fund and to enter into whatever contracts are needed to ensure that the provisions of subsection (k) of this section do not reduce or delay benefits payable pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

L.1948, c.110, s.23; amended 1970, c.323; 1971, c.50; 984, c.24, s.18; 1992, c.44, s.11; 1994, c.112, s.4; 1996, c.47, s.1; 2002, c.7.

43:21-48. Assessment of costs of administration

(a) If officers or employees of the Division of Employment Security perform duties in part related to the administration of this act and of the unemployment compensation law, or if there be expenses otherwise incurred jointly in connection with administration of such acts, the division shall make an equitable apportionment to determine the portion of total expense to be charged to administration of this act including R.S. 43:21-4(f). So far as possible such apportionment shall be based upon records to be maintained with the respect to activities undertaken in administering this act.

(b) The Division of Employment Security shall, at the end of each fiscal year, determine the total amount expended by it for administrative cost directly attributable to the supervision and operation of approved private plans, together with a proportionate part of the administrative cost of R.S. 43:21-4(f), and such total amount shall be prorated among the approved private plans in effect during that year on the basis of the total amount of taxable wages that were paid to all employees covered under such private plans. The prorated amounts shall be assessed against the respective employers but shall not exceed 1/20 of 1% of such wages, and such amounts shall be collectible by the division in the same manner as provided for the collection of employer contributions under the chapter to which this act is a supplement. In making this assessment, the division shall furnish to each affected employer a brief summary of the apportionment of expense to be charged to administration of this act, and of the facts upon which the calculation of

the assessment is based. The amounts of such assessments shall be credited to the administration account.

(c) The division shall, at the end of each fiscal year, determine the total amount expended by it for administrative cost directly attributable to maintaining separate disability benefits accounts for employers required to contribute to the State disability benefits fund and assigning modified rates of contribution to such employers in accordance with the provisions of R.S. 43:21-7(e)(3). Such total amount of administrative costs shall be prorated among such employer accounts on the basis of the total amount of taxable wages paid to all employees during the preceding calendar year with respect to which contributions were payable to the State disability benefits fund. The prorated amounts shall be assessed against the respective employers, and such amounts shall be collectible by the division in the same manner as provided for the collection of employer contributions in R.S. 43:21-14. The amounts of such assessments shall be credited to the administration account.

L.1948, c. 110, p. 605, s. 24. Amended by L.1950, c. 173, p. 397, s. 6; L.1951, c. 282, p. 976, s. 1; L.1970, c. 324, s. 3.

43:21-49. Notice and claim for disability benefits

(a) In the event of the disability of any individual covered under the State plan, the employer shall on the ninth day of disability issue to the individual and to the division printed notices on division forms containing the name, address and Social Security number of the individual, such wage information as the division may require to determine the individual's eligibility for benefits, and the name, address, and division identity number of the employer, together with a printed copy of benefit instructions of the division. Not later than 30 days after the commencement of the period of disability for which such notice is furnished, the individual shall furnish to the division a notice and claim for disability benefits under the State plan or for disability during unemployment. Upon the submission of such notices by the employer and the individual, the division may issue benefit payments for periods not exceeding 3 weeks pending the receipt of medical proof. When requested by the division, such notice and proof shall include certification of total disability by the attending physician, or a record of hospital confinement. Failure to furnish notice and proof within the time or in the manner above provided shall not invalidate or reduce any claim if it shall be shown to the satisfaction of the division not to have been reasonably possible to furnish such notice and proof and that such notice and proof was furnished as soon as reasonably possible.

(b) A person claiming benefits under the State plan or for disability during unemployment shall, when requested by the division, submit at intervals, but not more often than once a week, to an examination by a legally licensed physician, dentist, podiatrist, chiropractor, or public health nurse designated by the division. In all cases of physical examination of a claimant, the examination shall be made by a designee of the division, who shall be the same sex as the claimant if so requested by the claimant. All such examinations by physicians, dentists, podiatrists, chiropractors or nurses designated by the division shall be without cost to the claimant and shall be held at a reasonable time and place. Refusal to submit

to such a requested examination shall disqualify the claimant from all benefits for the period of disability in question, except as to benefits already paid.

(c) All medical records of the division, except to the extent necessary for the proper administration of this act, shall be confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the identity of the claimant, or the nature or cause of disability nor admissible in evidence in any action or special proceeding other than one arising under this act.

L.1948, c. 110, p. 606, s. 25. Amended by L.1950, c. 173, p. 398, s. 7; L.1951, c. 60, p. 413, s. 1; L.1968, c. 406, s. 2, eff. Jan 13, 1969; L.1980, c. 90, s. 15.

43:21-50. Review

(a) If a person claiming benefits under an approved private plan shall be unable to agree with the employer or insurer as to benefits thereunder, such claimant may, within one year after the beginning of the period for which benefits are claimed, file a complaint with the division, which shall conduct such investigation, including informal hearings, as it deems proper. Such complaint shall be filed in writing in a form satisfactory to the division. The division shall have the authority to make procedural rules and regulations providing for a fair and impartial hearing, and shall designate one or more hearing officers. If the issues raised by the complaint are not settled, the hearing officer shall conduct a hearing upon due notice to the claimant, the employer and the insurer, if any, at which any party in interest shall have the right to appear. At such hearing evidence, exclusive of ex parte affidavits, may be produced by any party, but the hearing officer, in conducting the hearing, shall not be bound by the rules of evidence. All proceedings at such hearing shall be recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed. The hearing officer shall make a determination of facts, and an order disposing of the issues presented, which shall be final and binding on the claimant, the employer and the insurer. A copy of such order shall be served upon each of the interested parties by registered mail addressed to their respective last-known addresses. Any party in interest feeling aggrieved by action of the hearing officer may secure judicial review through a proceeding in lieu of prerogative writ. The cost of recording and transcribing the proceedings, and of the preparation of the entire record required on the review, shall constitute a cost of administering this act.

(b) Individuals claiming benefits under the State plan shall be entitled to review hearing and determination as provided in unemployment compensation cases.

L.1948, c. 110, p. 607, s. 26. Amended by L.1953, c. 41, p. 772, s. 11.

43:21-51. Fees of attorney and medical witnesses

In any proceeding had as the result of a complaint filed with the commission as provided in this article, the hearing officer may (i) if an award of benefits is made to an employee, allow a reasonable fee, not exceeding twenty per centum (20%) of the amount of the award, to the attorney, if any, representing the employee, payable by the employer or insurer, and (ii)

allow reasonable appearance fees to medical witnesses, the payment of which may be assessed wholly or in part against the employee, the employer or the insurer as the hearing officer shall determine. Except for amounts thus allowed, it shall be unlawful for an attorney or any other person to ask for, contract for, or receive, directly or indirectly, any charge for services in securing or attempting to secure any benefits hereunder, or for a medical witness to make any charge for an appearance at a hearing held pursuant to this act.

L.1948, c. 110, p. 608, s. 27.

43:21-52. Records and reports

(a) Each employer shall keep true and accurate employment records, containing such information as may reasonably be prescribed by the commission. Such records shall be open to inspection by the commission or its authorized representative at any time during ordinary business hours for the purpose of ascertaining whether such employer is a covered employer and, if so, whether such employer is complying with the provisions of this act. Information thus obtained shall not be published or open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing an employee's or employer's identity, but any claimant at a hearing before the commission or a hearing officer shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(b) Covered employers whose employees are participating in an approved private plan and any insurer of an approved private plan shall furnish such reports and information and make available to the commission such records as the commission may by regulation require for the proper administration of this act.

(c) The commission is hereby authorized and directed to make available to any insurer or self-insurer, on request, any information from its records that is necessary for the determination of liability under an approved private plan.

L.1948, c. 110, p. 608, s. 28.

43:21-53. Rights in payments

Benefits payable under an approved private plan by an employer as a self-insurer shall have the same preference against the assets of the employer as are now or may hereafter be allowed by law for a claim for unpaid wages for labor, and benefits under the State plan and for any disability during unemployment as provided by section 43:21-4(f) or under an approved private plan shall not be assignable or subject to levy, execution, attachment or other process for satisfaction of debts.

L.1948, c. 110, p. 609, s. 29. Amended by L.1950, c. 173, p. 399, s. 8.

43:21-54. Financial responsibility under private plans

If a private plan does not provide for the assumption by an insurer, duly authorized and admitted to do business in this State, of the liability to pay the benefits afforded by such plan, the commission shall not approve it unless the employer files with the commission the bond of an admitted surety insurer conditioned on the payment of obligations under the plan, or deposits with the commission securities approved by the commission to secure the payment of such obligations. The penal sum of the bond or the amount of the deposit shall be determined by the commission and shall be not less than one-half of the contributions which would have been paid by the employees to be covered by the plan during the previous year, or one-half of the estimated contributions of such employees for the ensuing year, whichever is greater; provided, however, that any employer who is a self-insurer and is exempt from insuring his workmen's compensation liability, as provided by law, shall so long as such exemption remains in effect be exempt from the surety bond and security deposit requirements of this section; and any other employer who shall satisfy the commission as to the permanence of his business and his financial ability to pay the benefits provided by a private plan submitted for approval may, upon application, be exempted from such requirements by written order of the commission, which order shall be revocable at any time.

L.1948, c. 110, p. 609, s. 30.

43:21-55. Penalties

(a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense, to obtain or increase any benefit under the State plan or an approved private plan, or for a disability during unemployment, either for himself or for any other person, shall be liable for a fine of twenty dollars (\$20.00) to be paid to the division. Upon refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey. If in any case liability for the payment of a fine as aforesaid shall be determined, any person who shall have received any benefits hereunder by reason of the making of such false statements or representations or failure to disclose a material fact, shall not be entitled to any benefits under this act for any disability occurring prior to the time he shall have discharged his liability hereunder to pay such fine.

(b) Any employer or any officer or agent of any employer or any other person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to prevent or reduce the benefits to any person entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employer under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be liable for a fine of twenty dollars (\$20.00) to be paid to the division. Upon refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey.

(c) Any person who shall willfully violate any provision hereof or any rule or regulation made hereunder, for which a fine is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of fifty dollars (\$50.00) to be paid to the division. Upon the refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey.

(d) Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense upon conviction before the Superior Court or any municipal court for a fine not to exceed two hundred fifty dollars (\$250.00) or by imprisonment for a term not to exceed ninety days, or both, at the discretion of the court. The fine upon conviction shall be payable to the State disability benefits fund of the division. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

L.1948, c.110, s.31; amended 1950, c.173, s.9; 1991, c.91, s.422; 1997, c.318, s.1.

43:21-55.1. Liability for repayment of disability benefits overpayments

(a) If it is determined by the division that an individual for any reason has received, under the State plan, an approved private plan or for a disability during unemployment, any sum of disability benefits to which the individual was not entitled, the individual shall, except as provided in subsection (b) of this section, be liable to repay the sum in full. Except as provided in subsection (b) of this section, the sum that the individual is liable to repay shall be deducted from future benefits payable to the individual under this act (C.43:21-25 et seq.) or subsection (f) of R.S.43:21-4, or shall be repaid by the individual to the division, the employer or the insurer, and that sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; except that no individual who does not knowingly misrepresent or withhold any material fact to obtain benefits shall be liable for any repayments or deductions against future benefits unless notified before four years have elapsed from the time the benefits in question were paid. The division shall promptly notify the individual by mail of the determination and the reasons for the determination. Unless the individual files an appeal of the determination within 20 calendar days following the receipt of the notice, or, within 24 days after the notice was mailed to the individual's last known address, the determination shall be final.

(b) If the individual received the overpayment of benefits because of error made by the division, the employer or the physician, and if the individual did not knowingly misrepresent or withhold any material fact to obtain the benefits, the following limits shall apply:

(1) The amount withheld from any subsequent benefit check shall be an amount not greater than 50% of the amount of the check; and

(2) All repayments of the overpayments by the individual or the estate of the individual shall be waived if the individual is deceased or permanently disabled.

Any demand for repayment from an individual pursuant to this subsection shall include an explanation of the provisions of this subsection.

L.1997, c.318,s.2.

43:21-56. Severability

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be unconstitutional, invalid or inoperative, in whole or in part, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. To the extent that any provision of this act shall not have been adjudged unconstitutional, invalid or inoperative, such provision shall be enforced and effectuated.

L.1948, c. 110, p. 612, s. 33.

APPENDIX

An Act concerning workmen's compensation, relating to reimbursement of disability benefits paid under the Temporary Disability Benefits Law (P.L. 1948, c. 110) for the same accident or sickness compensable under chapter fifteen of Title 34 of the Revised Statutes, and supplementing chapter fifteen of Title 34 of the Revised Statutes. (P.L. 1950, c. 174.)

34:15-57.1

Whenever an employee becomes entitled to or is awarded compensation for temporary disability pursuant to chapter fifteen of Title 34 of the Revised Statutes for the same weeks or period with respect to which he has received disability benefits pursuant to the Temporary Disability Benefits Law (P.L. 1948, c. 110), the Deputy Directors or Referees of the Division of Workmen's Compensation are authorized to incorporate in such award, order, or approval of settlement, an order requiring the employer or his insurance carrier to reimburse the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer involved in the claim under chapter fifteen of Title 34 of the Revised Statutes, or his insurance carrier, as the case may be, the amount of any disability benefits it may have paid to such employee.

34:15-57.2

Whenever an employer or his insurance carrier involved in the claim under chapter fifteen of Title 34 of the Revised Statutes shall receive written notice from the Division of Employment Security of the New Jersey Department of Labor and Industry that disability benefits have been paid to an employee as a result of an accident or sickness for which the said employee may be entitled to benefits under chapter fifteen of Title 34 of the Revised Statutes, such employer or his insurance carrier, as the case may be, shall, before making any payment on account of any pending award, order, or settlement under said chapter fifteen of Title 34 of the Revised Statutes, inquire of the employee as to whether or not he has received disability benefits by reason of the same accident or sickness and advise the Division of Employment Security of the New Jersey Department of Labor and Industry or the employer who made payment of the disability benefits, or his insurance carrier, as the case may be, of the result of such inquiry.

In proceedings before the Division of Workmen's Compensation, it shall be the duty of the employer against whom claim is made under chapter fifteen of Title 34 of the Revised Statutes, and his insurance carrier, if any, to present, at any hearing involving a workmen's compensation claim affected by this act, sufficient proof as to the amounts paid under the Temporary Disability Benefits Law (P.L. 1948, c. 110), for which reimbursement is allowable in pursuance of the provisions of the Temporary Disability Benefits Law (P.L. 1948, c. 110), such proof to be furnished by the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer who made payment of the disability benefits or his insurance carrier, as the case may be.

34:15-57.3

This act shall take effect on the first day of July, one thousand nine hundred and fifty.